Supreme Court, U.S.
FILED

No. 99 695

OCT 19 1999
OFFICE OF THE CLERK

In the

Supreme Court of the United States

SHAWNTAE WILLIAMSON, EARLIN WILLIAMSON, SHELDON J. SANDMAN, MORRIS A. LEVY, DAVID S. PETRICH, individually and as partners in the law firm of SANDMAN, LEVY & PETRICH, an Illinois partnership, NORMAN M. BERKSON, ARTHUR M. GOROV and HOWARD H. LEVIN, individually, the law firm of BERKSON, GOROV & LEVIN, LTD., a professional corporation, and GLORIA TALANDA,

Petitioners,

v.

CHICAGO TRANSIT AUTHORITY, a municipal corporation,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

DAVID S. PETRICH
SANDMAN, LEVY AND PETRICH
134 North LaSalle Street
Suite 1323
Chicago, Illinois 60602
(312) 726-1692

DAVID A. NOVOSELSKY
Counsel of Record
LINDA A. BRYCELAND
DAVID A. NOVOSELSKY & ASSOCIATES
120 North LaSalle Street
Suite 1400
Chicago, Illinois 60602
(312) 346-8930

Attorneys for Petitioners

Midwest Law Printing Co., Chicago 60610, (312) 321-0220

45 pp

QUESTIONS PRESENTED

1. Should this Court determine as a question of first impression whether a federal due process violation giving rise to a cause of action under 42 U.S.C. §1983 arises from a fraudulent pattern of conduct by a municipal corporation in entering into settlement agreements and refusing to pay judgments in accord with a state court order in states such as Illinois where the holders of judgments against municipal corporations may not collect by execution against the property of the municipal corporations to satisfy those obligations?

2. Whether in instances in which holders of judgments against municipal corporations may not collect by execution against the property of the municipal corporations to satisfy those obligations, the judgment holder has adequate remedies in state court to collect on the judgment which would preclude an action pursuant to 42 U.S.C. §1983?

3. Whether allegations of a fraudulent pattern of conduct by a municipal corporation in inducing plaintiffs to settle actions against the local municipal corporation and in failing to comply with a garnishment order entered by the state court states a cause of action for a federal due process violation giving rise to a cause of action under 42 U.S.C. §1983?

RULE 29.6 STATEMENT

The name of every party or amicus the attorney represents in this case:

Shawntae Williamson, Earlin Williamson, Sheldon J. Sandman, Morris A. Levy, David S. Petrich, individually and as partners in law firm of Sandman, Levy & Petrich, Norman M. Berkson, Arthur M. Gorow and Howard H. Levin, individually and as law firm of Berkson, Gorow & Levin and Gloria Talanda.

The names of all law firms whose partner or associates have appeared for the party in the case or are expected to appear for the party in this court:

Sandman, Levy & Petrich; Berkson, Gorow & Levin, Ltd.; and, David A. Novoselsky & Associates.

TABLE OF CONTENTS

PAGE

QUESTION PRESENTED FOR REVIEW i

RULE 29.6 STATEMENT ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES iv

OPINIONS BELOW 1

STATEMENT OF JURISDICTION 1

CONSTITUTIONAL PROVISION INVOLVED 3

STATEMENT OF THE CASE 3

JUDGMENT SOUGHT TO BE REVIEWED 13

REASONS FOR GRANTING THE WRIT 15

THE GRANT OF PETITIONERS' WRIT IS WARRANTED TO DECIDE IMPORTANT QUESTIONS OF FEDERAL LAW WHICH HAVE NOT PREVIOUSLY BEEN CONSIDERED BY THIS COURT 15

CONCLUSION 29

APPENDIX ..... *infra*

TABLE OF AUTHORITIES

Cases: PAGE(S)

Arnold & Murdock Co. v. Industrial Commission, 314 Ill. 251, 145 N.E. 342 (1924) 15

Board of Regents v. Roth, 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972) 15

Bryant v. General Electric Credit Corp., 58 B.R. 144 (N.D. Ill. 1986) 27

Chaney v. Suburban Bus Division of Regional Transportation Authority, 52 F.3d 623 (7th Cir. 1995) 13, 21

City of Chicago v. Hasley, 25 Ill. 595 (1981) 16

Evans v. City of Chicago, 689 F.2d 1286 (7th Cir. 1982) (*Evans I*) 22, 23

Evans v. City of Chicago, 873 F.2d 1007 (7th Cir. 1989) (*Evans II*) 23

Evans v. City of Chicago, 10 F.3d 474 (7th Cir. 1993) 13, 20, 22, 23, 24

In re Guardianship of Ball, 162 Ill.2d 153, 205 Ill.Dec. 78, 612 N.E.2d 1195 (1994) 27

Logan v. Zimmerman Brush Company, et al., 455 U.S. 422, 102 S.Ct. 1148, 71 L.Ed.2d 265 (1982) 15, 21

Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1, 98 S.Ct. 1554, 56 L.Ed.2d 30 (1978) 15

Mid-American Waste Systems, Inc. v. City of Gary, 49 F.3d 286 (7th Cir. 1995) 26

Monell v. New York City Dept. of Social Services, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978) 19

Monroe v. Pape, 365 U.S. 167, 81 S.Ct. 473, 5 L.Ed.2d 492 (1961) 19

Moore v. Town of Browning, 373 Ill. 583, 27 N.E. 2d 533 (1940) 16, 17, 20, 28

Parratt v. Taylor, 451 U.S. 527, 101 S.Ct. 1908, 81 L.Ed. 2d 815 (1984) 18, 21

People ex rel. Farwell v. Kelly, 367 Ill. 616, 12 N.E.2d 612 (1937) 15, 27

Constitutional Provision:

U.S. Const. Amend. XIV 3

Statute:

42 U.S.C. §1983 (1996) 2, 14

PETITION FOR WRIT OF CERTIORARI

Petitioners, Shawntae Williamson, Earlin Williamson, Sheldon J. Sandman, Morris A. Levy, David S. Petrich, individually and as partners in the law firm of Sandman, Levy & Petrich, an Illinois partnership, Norman M. Berkson, Arthur M. Gorov and Howard H. Levin, individually, the law firm of Berkson, Gorov & Levin, Ltd. a professional corporation, and Gloria Talanda, respectfully petition for a writ of certiorari to review the July 21, 1999 judgment of the Seventh Circuit Court of Appeals in this matter.

OPINIONS BELOW

The opinion of the Seventh Circuit Court of Appeals is reported at 185 F.3d 792 (7th Cir. 1999). (App. at 1-6.) The District Court rulings are unreported. (App. at 7-9, 10.)

JURISDICTIONAL STATEMENT

On January 16, 1998, plaintiffs, SHAWNTAE WILLIAMSON, EARLIN WILLIAMSON, SHELDON J. SANDMAN, MORRIS A. LEVY, DAVID S. PETRICH, individually and as partners in the law firm of SANDMAN, LEVY & PETRICH, an Illinois partnership, NORMAN M. BERKSON, ARTHUR M. GOROV and HOWARD H. LEVIN, individually, the law firm of BERKSON, GOROV & LEVIN, LTD., a professional corporation, and GLORIA TALANDA, brought a complaint against defendant, CHICAGO TRANSIT AUTHORITY. Plaintiffs filed a first amended complaint on February 11, 1998. A second

amended complaint was filed on February 27, 1998. Plaintiffs filed a third amended complaint on March 6, 1998 which is the subject of this petition. The jurisdiction of the District Court was based on 28 U.S.C. §1331.

On May 5, 1998, as docketed on May 7, 1998, the District Court entered a Minute Order and Judgment by which it granted Defendant-Appellee's motion to dismiss the Third Amended Complaint, dismissed Counts I, III, and IV of the Third Amended Complaint for failure to state a viable federal cause of action, declined to exercise supplemental jurisdiction over Count II, denied all pending motions as moot, and terminated the case.

The Court of Appeals had jurisdiction over this appeal pursuant to 28 U.S.C. §1291, the District Court having entered a final judgment as to all of the parties. The Court of Appeals entered judgment on July 21, 1999. (App. at 1.)

The jurisdiction of this Court arises under 28 U.S.C. §1254(1) and United States Supreme Court Rule 10(c).

STATUTE INVOLVED

This case involves section 1983 of the Civil Rights Act of 1996 which provides as follows:

> Every person who under color of any statute, ordinance, regulation, custom or usage, of any State or Territory of the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in

equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia. 42 U.S.C.A. §1983 (1996).

CONSTITUTIONAL PROVISION INVOLVED

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (U.S.C. Const. Amend. XIV).

STATEMENT OF THE CASE

I. PROCEEDINGS BELOW

A. In the District Court

This Petition arises from the dismissal of plaintiffs' Third Amended Complaint which was filed against the Chicago Transit Authority ("CTA") in the District Court for the Northern District of Illinois. (C.12 Third Amended Complaint (hereafter "C.12, The Complaint")).The CTA, a municipal corporation, is immune under Illinois law from levy or collection by execution against its property.

(*Moore v. Town of Browning*, 373 Ill. 583, 27 N.E. 2d 533, 536 (1940).) Counts I, III and IV of plaintiff's Third Amended Complaint are brought pursuant to 42 U.S.C. §1983, alleging respectively that the CTA, a municipal corporation, had deprived plaintiffs of their property and liberty interests without due process of law by engaging in the following patterns of conduct: entering into settlements with injured plaintiffs based upon an understanding between the parties that payment would be forthcoming within a specified time frame when the CTA had no intention of fulfilling that agreement; failing to turn over to plaintiff the proceeds of deductions which it withheld from its employee's check pursuant to court order; and, by failing to pay medical expenses which it had agreed to assume as part of its settlement agreement of its employee's worker compensation claims. (C.12, The Complaint). Count II of the Third Amended Complaint is based on common law fraud. (*Id.*)

In Count I of the Third Amended Complaint, plaintiffs Shawntae Williamson, Earlin Williamson, Sheldon J. Sandman, Morris A. Levy, David S. Petrich, individually, and as partners in the law firm of Sandman, Levy & Petrich, alleged that the CTA had used, and continued to use, protections afforded it under Illinois law as a municipal corporation to purposefully, intentionally and recklessly induce injured litigants to accept compromised and reduced amounts in settlement of their personal injury claims and dismiss their lawsuits with prejudice, knowing of its policy and practice of prolonged delays in payment, if any payment was ever made, of the compromised and reduced settlement amount. (C.12, The Complaint). Plaintiffs maintained that they had been de-

prived of their property and liberty interests without due process of law by the CTA in violation of 42 U.S.C. §1983. (C.12, The Complaint).

In 1993, plaintiff, Shawntae Williamson, then a minor, by her mother and next friend, Earlin Williamson, filed a lawsuit for personal injury against the CTA, a municipal corporation, in the Circuit Court of Cook County, Municipal Department, First District (Case No. 93 M1-302198). (C.12, The Complaint). On July 28, 1997, the date the case was set for trial, a settlement was reached by which Williamson compromised and reduced her claim and dismissed her lawsuit with prejudice, and the CTA agreed to pay Williamson the compromised and reduced sum of $12,000.00. (*Id.*) On that date, an order was entered dismissing Williamson's case against the CTA with prejudice pursuant to the settlement agreement. (*Id.*) On that date, counsel for the CTA, Robert Ready, represented to Williamson's trial attorney, Michael A. Moore, that the settlement check would be issued within thirty to forty-five days. (*Id.*)

When the settlement check was not received within the designated time period, plaintiffs made repeated demands for the settlement check. (C.12, The Complaint at 3). Subsequently, on September 30, 1997, Williamson filed a Motion to Enforce Settlement Order before Judge Gilbert J. Grossi of the Circuit Court of Cook County, Municipal Department, First District. (*Id.*) The CTA, through its counsel, then informed Judge Grossi that the settlement check would be obtained within three weeks. Judge Grossi entered an order giving the CTA until October 21, 1997 to tender the settlement check. (*Id.*)

On October 23, 1997, counsel for the CTA informed Judge Gross that he needed until November 10, 1997 to obtain and present the settlement check. Judge Grossi entered an order allowing the CTA a final extension of time until November 10, 1997 in which to tender the settlement check. (C.12, The Complaint at 3). Also on October 23, 1997, for the first time, counsel for the CTA gave plaintiff's counsel a release to be executed by Williamson. (*Id.*) The executed release was returned to the CTA on November 4, 1997. (*Id.*)

On November 10, 1997, counsel for the CTA appeared before Judge Grossi and informed him that the CTA had not received the signed release from Williamson and could not begin to prepare the settlement check until it had received the signed release. (C.12, The Complaint at 4). Counsel for Williamson objected, arguing that the November 10, 1997 order was the final date for the CTA's delivery of the settlement check and that receipt of the signed release was not a precondition of the CTA's delivery of the settlement check. (*Id.*) Judge Grossi was also informed by Williamson's counsel that the executed release had been sent to the CTA on November 4, 1997. (*Id.*) Counsel for the CTA then told Judge Grossi that he would have the CTA's settlement check by November 20, 1997, if he received the release. (*Id.*) Judge Grossi continued the matter until November 20, 1997. (*Id.*)

On November 11, 1997, counsel for Williamson personally delivered a duplicate original release signed by Williamson. (C.12, The Complaint at 4). Counsel for the CTA signed for the release. (*Id.*) The CTA then failed to tender the settlement check on or before November 20, 1997. (*Id.*)

By order entered on November 20, 1997, Judge Sidney A. Jones III reduced the compromised and reduced settlement to a judgment against the CTA *nunc pro tunc* to July 28, 1997 with interest accruing from that date, plus costs. (C.12, The Complaint at 5). In addition, Judge Green awarded $300.00 in attorneys' fees to the law firm of SANDMAN, LEVY & PETRICH. (*Id.*) As of March 6, 1998, the CTA had not tendered a valid settlement check or satisfied any portion of the judgment entered against it. (*Id.*)

Following the commencement of this suit, on January 30, 1998, the CTA delivered a check in the amount of $12,871.13 in an attempt to satisfy the judgment, costs, attorneys' fees and statutory interest for which it was liable. (C.12, The Complaint at 7). However, that check contained a misspelling in the name of Shawntae Williamson. (*Id.*) As a professional courtesy, counsel for plaintiffs advised the CTA of the misspelling in the name of Shawntae Williamson. (*Id.*) In doing so, plaintiffs' counsel did not agree that the CTA's delivery of the check or any replacement check would satisfy plaintiffs' claims against the CTA or bring this litigation to a conclusion. (*Id.* at 7-8).

On February 6, 1998, the CTA delivered a replacement check to plaintiffs' counsel in the amount of $12,877.04 which purportedly reflected the full amount of the judgment, costs, attorneys' fees and statutory interest then due plaintiffs. (C.12, The Complaint at 8). However, the replacement check issued and delivered by the CTA again contained a misspelling in the name of Shawntae Williamson. (*Id.*) As a professional courtesy, plaintiffs' counsel again pointed out the misspelling. (*Id.*) Again,

there was no agreement that delivery of any check from the CTA would absolve the CTA of any liability or would cause plaintiffs to dismiss the present action. (*Id.*) In response, the CTA stated that it was its "policy" to adhere to the spelling of names based upon its own records, without concern as to whether or not their own records were correct or accurate. (*Id.*) Plaintiffs alleged that, having delivered a check containing an improper spelling of Shawntae Williamson's name and refusing to correct it, the CTA was continuing in its custom, practice and policy of stalling, delaying and otherwise failing to live up to its obligations and pay the amounts due under settlement agreements it had induced litigants to enter into knowing full well that it had no intention of timely, if ever, paying said amounts. (*Id.* at 8).

The action stated in Count I of the Third Amended Complaint was brought on behalf of a class which included all persons who had entered into settlement agreements with the CTA pursuant to which they compromised their claims, dismissed their lawsuits with prejudice, accepted a reduced sum in settlement of their claims, but had not received said sum as a result of the CTA's failure to pay any portion thereof. (C.12, The Complaint at 13).

Count III of the Third Amended Complaint alleged a violation of 42 U.S.C. §1983 based upon the conduct of the CTA in failing to pay the judgment in favor of Sondra E. Edwards on behalf of Christian Artis. (C.12, The Complaint at 15-16). Plaintiff alleged that the CTA had deducted or otherwise withheld monies from the salary and other benefits due and payable by it to William Artis, but that no portion of that money had been paid by the

CTA in satisfaction of, or partial payment towards, the judgment amount entered against it on December 19, 1997. (*Id.* at 16)

Sondra Edwards was the Petitioner in an action filed in the Circuit Court of Cook County, Divorce Division, as Case No. 89 D 72242. (C.12, The Complaint at 15). William Artis was the Respondent in that action. Ms. Edwards was represented by Norman Berkson, Arthur M. Gorov and Howard H. Levin, individually and the law firm of Berkson, Gorov and Levin, Ltd., a professional corporation. (*Id.*)

On August 4, 1997, a judgment for attorneys' fees was entered in favor of Ms. Edwards on behalf of Christian Artis, a minor, f/u/o Berkson, Gorov and Levin, Ltd. and against William Artis in the amount of $2,370.25. (C.12, The Complaint at 15). Following the entry of that order, a Wage Deduction Summons and Affidavit for Wage Deduction Order were served on defendant, CTA. (*Id.* at 16). William Artis was an employee of the CTA. In response, the CTA filed an answer and interrogatories concerning the wages of William Artis. (*Id.*)

Based upon the information provided by the CTA, on December 19, 1997, Judge Glynn J. Eliot, Jr. of the Circuit Court of Cook County entered a judgment in favor of Sondra Edwards on behalf of Christian Artis, a minor, f/u/o Berkson, Gorov and Levin, Ltd. in the amount of $1,344.46, less statutory fees in the amount of $26.88 for a net total judgment of $1,317.58 against the CTA. (C.12, The Complaint at 16). Subsequently, the CTA was provided with a Release and Satisfaction of Judgment. (*Id.*) Numerous demands for payment were made upon the CTA. As of March 6, 1998, the CTA had not paid the

judgment amount of $1,344.46 or any portion thereof entered against it on December 19, 1997. (*Id.*)

Subsequently, the CTA delivered to plaintiffs a check in the amount of $1,317.57 in an attempt to satisfy all amounts due as a result of the orders and judgment entered against it. (C.12, The Complaint at 17). However, the check delivered by the CTA was made payable to Sondra Edwards *and* Berkson, Gorov & Levin, Ltd. (*Id.* at 18). The judgment entered against the CTA indicated that the judgment was in favor of Berkson, Gorov & Levin, Ltd., not Sondra Edwards and Berkson, Gorov & Levin, Ltd. (*Id.*)

This action was brought on behalf of a class which included all persons who had obtained judgments for their individual claims, or on behalf of other parties or entities, including their attorneys, against the CTA, but had not yet received said sum or any portion thereof as a result of the CTA's failure to have paid any portion thereof. (C.12, The Complaint at 19).

Count IV of the Third Amended Complaint stated violations of 42 U.S.C. §1983 in relation to the CTA's conduct toward Gloria Talanda. (C.12, The Complaint at 21). Plaintiff alleged that the CTA had used and continued to use the protections afforded it under Illinois law as a municipal corporation to purposely, intentionally and recklessly induce injured workers to agree to accept reduced amounts in settlement of their work-related injury claims and to dismiss their worker's compensation claims with prejudice while knowing full well of its policy and practice of prolonged delays in the payment of those claims, if payment was ever made, of the outstanding medical and hospital expenses accrued by the injured

employee. (C.12, The Complaint at 24). Plaintiff alleged that the CTA had and would continue to cause immediate and irreparable injury to her, and that she had been intentionally deprived of her property and liberty interest without due process of law in violation of 42 U.S.C. §1983. (*Id.*)

Gloria Talanda, an employee of the CTA, was involved in work-related accidents on April 20, 1991 and January 29, 1992. (C.12, The Complaint at 21). As a result of those accidents, Ms. Talanda filed two worker's compensation claims with the State of Illinois, Industrial Commission, Case No. 92 WC 12149 and 92 WC 12150. (*Id.*) On October 29, 1996, a settlement was reached pursuant to which Ms. Talanda compromised and reduced her claim and dismissed her worker's compensation claims. (*Id.* at 21-22). The CTA agreed to pay her the compromised and reduced sum of $50,697.00. (*Id.*) A written Settlement Agreement was prepared and signed by both Ms. Talanda and the CTA. (*Id.* at 22) The settlement contract in the Lump Sum Petition and Order were filed with, approved and certified by the State of Illinois Industrial Commission. (*Id.*)

One of the specific terms of the settlement between Ms. Talanda and the CTA was that the CTA would be responsible for the payment of all of Ms. Talanda's related outstanding medical and hospital expenses accrued up to and including September 1, 1996. (C.12, The Complaint at 22). As of March 6, 1998, approximately eight (8) bills incurred by Ms. Talanda related to the accident from Louis A. Weiss Memorial Hospital, as well as a bill from MRI Imaging of Chicago, remained unpaid. Collection agencies had attempted to deal with the CTA for over a

year in order to secure payment of those outstanding hospital and medical expenses which Ms. Talanda incurred prior to September 1, 1996. (*Id.*) This Count also alleged a class action which included all persons who are, or were, employed by the CTA and entered into settlement agreements with the CTA pursuant to which they compromised their work-related injury claims, dismissed their worker's compensation claims with prejudice, accepted a reduced sum in settlement of their claims, including an obligation on the part of the CTA to pay all outstanding medical and hospital expenses, but in which the CTA had failed to satisfy the hospital and medical expenses they incurred as a result of their work-related injuries. (*Id.* at 25)

On May 5, 1998, the district court entered an order granting defendant CTA's Motion to Dismiss the Third Amended Complaint. That court dismissed the Third Amended Complaint for failure to state a viable federal cause of action, characterizing plaintiffs' claims in Counts I, III and IV as "delay in payment" claims, which in that court's view were barred by the Seventh Circuit's decision in *Evans v. City of Chicago*, 10 F.3d 474, 480-82 (7th Cir. 1993). The district court declined to exercise supplemental jurisdiction over Count II of the Third Amended Complaint which stated a claim based on common law fraud. All pending motions were denied as moot, with the district court holding that the case was terminated. (App. at 7-9, 10).

B. In the Court of Appeals

Plaintiffs appealed the district court's decision. That Court had jurisdiction over the appeal pursuant to 28 U.S.C. §1291. On July 21, 1999, the Seventh Circuit Court of Appeals affirmed the district court's judgment, holding that "a state or municipality's failure to make payment on state court judgments or settlement agreements does not give rise to a federal due process violation." (App. at 6.)

II. JUDGMENT SOUGHT TO BE REVIEWED

The Court of Appeals in *Williamson*, based its decision on its prior decisions in *Evans v. City of Chicago*, 10 F.3d 474 (7th Cir. 1993) (en banc), and, *Chaney v. Suburban Bus Division of Regional Transportation Authority*, 52 F.3d 623 (7th Cir. 1995). In *Evans*, the City of Chicago waited an average of 47 months to pay its judgment creditors. The judgment creditors sued the city, arguing amongst other things, that the city's slow payment violated their due process rights. The parties entered into an agreement requiring all judgments to be paid in the order of their entry. The Seventh Circuit Court of Appeals held that the parties failed to state a claim under the Due Process Clause. (*Id.* at 480). Relying on its decision in *Evans*, the Seventh Circuit, in *Chaney*, held that a municipal unit's refusal to obey an arbitrator's decision requiring the payment of employee back-pay did not "in and of itself establish a due process violation." (52 F.3d at 631).

As will be explained in detail below, plaintiff's claims did not focus on the CTA's failure to pay settlements or

judgments as promptly as they would like. Rather, plaintiffs' claims were based upon the CTA's scheme and policy: to defraud people such as the plaintiffs here of their rights by entering into settlement agreements in which the CTA agreed to make payment by a certain date, when it had no intention of complying with the agreement; taking monies which were not part of general government funds to which it had no right whatsoever, and treated those funds as its own; and, entering into a settlement agreement with its employee for payment of medical bills, but failed to honor or otherwise satisfy that agreement.

Despite the significant differences between the nature of the claims in this case and the Court of Appeals' prior decisions in *Evans* and *Chaney*, the Court of Appeals held that its prior decisions compelled a finding that Counts I, III and IV of the Third Amended Complaint failed to state claims under 42 U.S.C. §1983. (App. at 6). Specifically, the Court of Appeals held that the plaintiffs had possible recourse in state court, that plaintiffs' claims were state law claims, and that "a state or municipality's failure to make payments on state court judgments or settlement agreements does not give rise to a federal due process violation." (App. at 6).

REASONS FOR GRANTING THE WRIT

THE GRANT OF PETITIONERS' WRIT IS WARRANTED TO DECIDE IMPORTANT QUESTIONS OF FEDERAL LAW WHICH HAVE NOT PREVIOUSLY BEEN CONSIDERED BY THIS COURT.

A. The Seventh Circuit Court of Appeals Has Decided a Significant Due Process Question Which Has Not Been, But Should Be, Addressed By This Court.

This Court has repeatedly emphasized that the hallmark of property is an individual entitlement grounded in state law which cannot be removed except for cause. (*Memphis Light, Gas & Water Division v. Craft*, 436 U.S. 1, 11-12, 98 S.Ct. 1554, 1561-62, 56 L.Ed.2d 30 (1978); *Board of Regents v. Roth*, 408 U.S. 564, 576-78, 92 S.Ct. 2701, 2708-09, 33 L.Ed.2d 548 (1972).) A cause of action is a type of property protected by the Fourteenth Amendment's Due Process Clause. (*Logan v. Zimmerman Brush Company, et al.*, 455 U.S. 422, 428, 102 S.Ct. 1148, 1154, 71 L.Ed.2d 265 (1982).) Likewise, many contracts establish legitimate claims of entitlement "which may be treated as property interests." (*Mid-American Waste Systems, Inc. v. City of Gary*, 49 F.3d 286 (7th Cir. 1995).)

Under Illinois law, a judgment becomes a vested right of property once it is no longer subject to review or modification. (*Arnold & Murdock Co. v. Industrial Commission*, 314 Ill. 251, 255, 145 N.E. 342 (1924).) Despite its recognition that a governmental entity has no higher duty than to pay the judgments against it, (*People ex rel. Farwell v. Kelly*, 367 Ill. 616, 618-19, 12 N.E.2d 612 (1937), Illinois law does not allow holders of judgments against municipal corporations to collect by execution

against the property of the municipal corporation. (*City of Chicago v. Hasley*, 25 Ill. 595 (1981); *Moore v. Town of Browning*, 373 Ill. 583, 588, 27 N.E.2d 533 (1940).)

Plaintiffs' claims in this case are based upon their allegations that the CTA, a municipal corporation, engaged in a scheme and policy to defraud people such as the plaintiffs herein of their rights by: entering into settlement agreements in which the CTA agrees to make payment by a certain date, when it has no intention whatsoever of complying with that agreement; taking money as part of a purported garnishment, which was not part of general governmental funds and which it had no right to whatsoever, and treating those funds as its own; and, inducing its employees to settle worker's compensation claims upon defendant's agreement to pay medical bills, which defendant failed to do. (C.12, The Complaint). In short, the CTA has a policy of never paying on its claims until and unless, as in this case, a lawsuit is filed against it. As a result of these actions, plaintiffs such as those in the present case are denied a trial of their underlying claims, full compensation for their injuries, and the fees and costs incurred as a result of the CTA's fraudulent conduct.

The Court of Appeals in this case held that the "failure of a unit of state or local government to make payment on either a judgment award or settlement agreement does not give rise to a due process claim." (App. 5). In that Court's view, plaintiffs "should enforce their claims under state law." (*Id.*) That Court further held that since plaintiffs could use sanctions, contempt proceedings and writs of mandamus, that they had an adequate remedy under state law which precluded any claim as to a vio-

lation of their due process rights. (*Id.*) On that basis, the Seventh Circuit Court of Appeals affirmed the ruling of the district court, dismissing plaintiffs' claims pursuant to 42 U.S.C. §1983.

This Court has not addressed either the issue of whether an alleged fraudulent scheme to refuse payment under settlement agreements and court judgments by a municipal corporation constitutes a due process violation for which a plaintiff may seek redress pursuant to §1983, nor has this Court considered whether, in instances such as this, sanctions, contempt proceedings and writs of mandamus are in fact adequate remedies under state law, particularly where under state law, holders of judgments against a municipality may not collect by execution against the property of the municipality. (See *Moore v. Town of Browning*, 373 Ill. 583, 589, 27 N.E.2d 533, 536 (1940).)

The CTA, knowing full well that it is immune from all garnishment or collection proceedings through the protections afforded it under state law, has induced settlement agreements by promising to pay by a certain date with no intention of doing so, promised to pay medical benefits which it has no intention of paying, and held on to funds to which it has no right by its practice of failing to make garnishment payments in accordance with orders from the state court. (C.12, The Complaint). The Court of Appeals' position that adequate remedies are afforded in state law ring hollow as demonstrated by plaintiff, Shawntae Williams' allegations that she did resort to state court proceedings in an attempt to enforce her settlement agreement. (*Id.* at 4-5). That attempt was futile, as the defendant simply thumbed its nose at the

state court's orders that it make payment, failing to make the agreed upon payments until after the present lawsuit was filed in federal court. (*Id.*)

The issues in this case are significant as they not only affect the due process rights of plaintiffs such as those in the present case, but also bear on the public perception of the integrity of this country's judicial system and its ability to prevent municipal corporations and other local governmental entities from absconding with their property or reneging on vital terms of settlement agreements which they have induced the plaintiffs to accept. Review of these issues will provide necessary guidance to both the courts throughout this country, and to local governmental entities such as the CTA, in determining whether governmental entities have *carte blanche* to simply make any offer to get a settlement agreement and may defy state court judgments directing them to make payments to plaintiffs such as those in the present case pursuant to the Seventh Circuit Court of Appeals' decision in this matter.

B. Plaintiffs Do Not Have Adequate Remedies Available in State Court.

In *Parratt v. Taylor*, 451 U.S. 527, 537-44, 101 S.Ct. 1908, 1914-17, 81 L.Ed.2d 815 (1984), this Court held that in challenging a property deprivation, the claimant must either avail himself of the remedies guaranteed by state law or prove that the available remedies are inadequate. In the present case, the Court of Appeals held that plaintiffs do have possible recourse in state court, stating that "[s]anctions, contempt proceedings and writs of

mandamus could be used in state court to force the CTA to pay." (185 F.3d at 795). But, in *Monroe v. Pape*, 365 U.S. 167, 174, 81 S.Ct. 473, 5 L.Ed.2d 492 (1961), this Court observed that the purpose of the Civil Rights Act was to "provide a federal remedy where the state remedy, though adequate in theory, was not available in practice." (365 U.S. at 174, 81 S.Ct. 473, (in *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 663, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978), this Court, in examining another section of *Monroe v. Pape*, overruled that decision insofar as it holds that local governments are wholly immune from suit under §1983).) Here, plaintiffs do not have adequate remedies available in state court to either put an end to the deceptive and fraudulent practices of the CTA or to force the CTA to satisfy its obligations to them.

Here, the Appellate Court's belief that plaintiffs such as those in the present case have adequate remedies available in state court to force defendant to pay the sums owed is not borne out by the allegations in plaintiffs' Third Amended Complaint. For example, in regard to the claims by Shawntae Williamson in Count I of the Third Amended Complaint, plaintiff made several attempts to enforce the settlement agreement in state court resulting in orders directing the CTA to make payment to plaintiff. (C.12, The Complaint at 4-5). Quite simply, these orders were disregarded by this defendant.

Defendant's attitude, as exemplified in this case, is that settlement payouts that it agreed to pay by a certain date will only be paid when some court forces it to do so. Plaintiff had this defendant before the Circuit Court of Cook County, Illinois on three separate occasions, each

time with promises by the CTA that payment would be forthcoming by a certain date. (C.12, The Complaint at 4-5). Defendant did not meet one of those deadlines. On November 20, 1997, the Circuit Court of Cook County reduced the settlement to a judgment against the CTA *nunc pro tunc* to July 28, 1997, awarded interest and costs, and awarded Three Hundred Dollars ($300) in attorneys' fees to the firm of SANDMAN, LEVY & PETRICH. (*Id.*) Still, there was no tender of a valid settlement check prior to plaintiff's filing of the present action. (*Id.*) This is an instance in which resorting to state court in an attempt to force payment of the settlement agreement was futile.

This plaintiff cannot force the CTA to satisfy its obligations under the settlement agreement. (See, *e.g.*, *Moore v. Town of Browning*, 373 Ill. 583, 588, 27 N.E.2d 533 (1940).) Clearly, there is no effective means in state court of enforcing compliance and making the CTA pay. Indeed, as evidenced by what occurred in this case, plaintiff could have obtained an order every week directing defendant to pay, only to have defendant ignore such orders. Plaintiffs' petition for writ of certiorari should be granted so that this Court may provide guidance as to whether the state remedies available to plaintiffs are adequate.

C. The Decisions Relied Upon By the Seventh Circuit Do Not Support the Outcome in the Present Case.

In affirming the District Court's judgment dismissing plaintiffs' §1983 claims, the Court of Appeals relied upon two of its prior decisions, *Evans v. City of Chicago*, 10

F.3d 474 (7th Cir. 1993) and *Chaney v. Suburban Bus Division of the Regional Transportation Authority*, 52 F.3d 623 (7th Dist. 1995) in which that Court had held that the failure of a unit of state or local government to make payment on either a judgment award or settlement agreement does not give rise to a due process claim. Those cases were premised upon the attempts of the plaintiff to enforce a judgment, arbitration award, or settlement agreement itself. Thus, the claims in those cases differ from the claims in the present case, where plaintiffs are seeking to bring to an end a pattern of fraudulent conduct by the CTA regarding its settlement practices and its practice of failing to make garnishment payments in accordance with orders from the state court. This distinction was summarily dismissed by the Court of Appeals. (App. at 6). However, this distinction has merit, particularly in light of this Court's observations in *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 430, 1025 S.Ct. 1148, 1155, 71 L.Ed.2d 265 (1985).

In *Logan*, this Court examined a claim that the terms of an Illinois statute deprived the petitioner of an opportunity to pursue his employment discrimination claim. This Court specifically distinguished the case from its prior holding in *Parratt*, noticing that *Parratt* "was dealing with a . . . 'random and unauthorized act by a state employee . . . [and was] not a result of some established state procedure.'" (455 U.S. at 435-36, 102 S.Ct. at 1157-58) quoting *Parratt*, 451 U.S. at 541, 101 S.Ct. at 1916). As this Court observed, *Parratt* "was not designed to reach . . . a situation" where the deprivation is the result of an established state procedure. (455 U.S. at 436, 102 S.Ct. at 1158). The analogy to be drawn between the

cases relied upon by the Seventh Circuit Court of Appeals in this case and the allegations actually made by plaintiffs are similar to the distinctions drawn by this Court in *Logan* and its prior decision in *Parratt*.

The Seventh Circuit's 1993 decision in *Evans v. City of Chicago*, 10 F.3d 474 (7th Cir. 1993) (*Evans III*), which formed the cornerstone of that Court's decision in the present case, was the culmination of some sixteen years of litigation by tort judgment creditors of the City of Chicago challenging the constitutionality of the City's practices of delaying payment of tort judgments, and paying certain judgments before other judgments. That Court first considered the *Evans* case in 1982. (*Evans v. City of Chicago*, 689 F.2d 1286 (7th Cir. 1982) (*Evans I*).) There, tort judgment creditors of the City brought separate class actions under 42 U.S.C. §1983 challenging the constitutionality of the City's practices of delaying payment of tort judgments and paying tort judgments of $1,000 and less before paying larger judgments. The plaintiffs in that case had also argued that Ill.Rev.Stat., Ch. 85, Section 9-104 (now 745 ILCS 10/9-104), which governed the procedure for payments of tort judgments by municipalities and local governmental entities, was unconstitutional and that the City had failed to abide by those provisions in its practice of making such payments.

There, the Court of Appeals held that if the City had not invoked section 9-104(b) before the end of the fiscal year following the year in which the tort judgment became final, that the tort judgment holder could claim entitlement to immediate payment. (689 F.2d at 1297.) In those circumstances, the Court stated that "[d]elayed beyond that time although only a temporary and non-

final withholding of the plaintiff's property is a 'deprivation' within the meaning of the 14th Amendment." (*Id.*)

The Seventh Circuit Court of Appeals revisited some of the issues in *Evans I* in *Evans v. City of Chicago*, 873 F.2d 1007 (7th Cir. 1989) (*Evans II*).) There, the City appealed from the District Court's ruling that the City's method of paying tort judgments violated equal protection guarantees. There, the Court of Appeals held that the City's practice of delaying and prioritizing payments of tort judgments did not violate equal protection guarantees. (873 F.2d at 1017) The Court decided the case solely on equal protection grounds, not on the basis of a due process violation, and awarded damages on that basis. (873 F.2d at 1018, footnote 15.)

Finally, the Seventh Circuit Court of Appeals again considered the City's practice of paying its tort judgments in *Evans v. City of Chicago*, 10 F.3d 474 (7th Cir. 1993) (*Evans III*).) There, following the remand of the case in 1989, the District Court revised its prior injunction to delete the relief which it believed that the Court of Appeals had barred in *Evans II*. The Court of Appeals held that the District Court could not require the City to abide by a consent decree that was not based upon a substantial claim under Federal law. The majority of that Court sitting *en banc* held that the consent decree must be vacated as, in that instance, the District Court did not find that after *Evans II*, the plaintiffs had a substantial claim under the due process clause. (10 F.3d at 483.)

In *Evans III*, the Court of Appeals noted that in *Evans I*, the plaintiff's due process claims had been based on their belief that tort judgments are property, that state law requires prompt payment, and that the failure to

abide by state law thus deprived them of their property right in prompt payment. (10 F.3d at 481.) There, section 9-104 (745 ILCS 10/9-14) sets forth the procedure to be utilized if the payment of a judgment was to be deferred past one year. That Court concluded that "litigants aggrieved by Chicago's failure to adhere to state law must take their claims to state court. [Citation omitted.] The Constitution does not authorize federal judges to superintend state and local government's compliance with their own laws. [Citations omitted.]" (10 F.3d at 481.) Thus, the majority of that Court concluded that, while state law *may* create property interests that *give rise to federal procedural entitlements*, actions such as establishing a budget was a legislative rather than person-specific decision which belonged in state, not federal, court. (10 F.3d at 481.)

Unlike the *Evans* cases, plaintiffs' claims are not based upon 745 ILCS 10/ 9-104 which was at the heart of the decision in *Evans I-III*. Here, there are three sets of claims which are distinct from the delayed payment claims in *Evans III*.

The first is based upon defendant's pattern of conduct in fraudulently inducing plaintiff to enter into a settlement agreement with it, in which part of the consideration for accepting the settlement offer was the promise of payment of the settlement within 45 days. This is not a matter of the CTA establishing a budget. Here, the sole question is whether the CTA fraudulently entered into a contractual arrangement with plaintiff by which it agreed to make payment within a specified period of time, when it had no intention of doing so, fraudulently inducing the plaintiff to forego her right to trial, and

obtaining a verdict in excess of the amount of the settlement agreement, upon the representation that with settlement there would be payment within 45 days. (C.12, The Complaint at 2-6).

The second group of claims are also entirely distinct from the issues considered in *Evans*. These claims involve the garnishment of the wages of one of the CTA's employees, and its failure to turn those sums over to the plaintiff as directed by an order of the Circuit Court of Cook County. In this instance, the CTA fraudulently withheld its employee's funds which did not even belong to it. (C.12, The Complaint at 15-16).

Plaintiffs' final claims case also differ from the claims against the City in *Evans*. Here, the CTA entered into a settlement agreement with the plaintiff in which, as part of that contractual agreement, the CTA agreed to pay her medical expenses incurred through September 1, 1996. Here, as with the other claims in the Third Amended Complaint, plaintiff alleged that the CTA fraudulently entered into this Agreement with the intent not to pay those expenses, let alone pay them in a timely manner. (C.12, The Complaint at 21-24).

The Seventh Circuit's decision in *Chaney* likewise failed to allege a pattern of conduct by state officials, as the plaintiffs did in the present case. Rather, there, the Court dealt with circumstances in which a former employee and union sued the bus company under §1983 alleging due process violations and seeking enforcement of an arbitration award. As discussed above, the claims contained in Counts I, III and IV of the Third Amended Complaint are entirely distinct from the issues in *Chaney*.

In *Mid-American Waste Systems, Inc. v. City of Gary*, 49 F.3d 286 (7th Cir. 1995), the Seventh Circuit Court of Appeals noted that the "conclusion that all contract rights are property rights does more than protect them from interference under the contract's clause and require compensation under the takings clause. It has the potential to move ordinary contract litigation between private parties and state actors into federal court, . . ." (49 F.3d at 289). That Court concluded that if the plaintiff was right and his contract created a "particular entitlement," then, "the case belongs in federal court. . . ." (*Id.*) Shawntae Williamson had a property right in the settlement agreement which defendant fraudulently induced her to enter into with promises of a certain period within which payment would be made. Subsequently, the defendant effectively took the stance that plaintiff should have gotten in line with all of its other creditors, or gone to the expense of finding some way for a state court to force defendant to pay. Such a position is unconscionable and demonstrates a pattern of behavior by this defendant to deprive her of her property interest in the settlement agreement which differs from the decision in *Evans III* and *Chaney*.

Likewise, plaintiff Bergson's claims in Count III is not based upon the CTA's failure to promptly pay the amounts at issue, but rather upon the CTA's conduct in furtherance of a scheme to withhold the wages and other benefits of its employees and use those funds for its own purposes in the interim. Here, defendant is not being asked to pay a judgment out of its coffers, as it was in *Evans III* and *Chaney*. Rather, it is merely acting as an employer who was ordered by the Court to pay out on a wage garnishment order. In such instances, the em-

ployer-garnishee, in this case the CTA, holds the debtor's funds as a stake holder until the order is entered and the claims of property are settled. (See, *e.g., Bryant v. General Electric Credit Corp.*, 58 B.R. 144 (N.D. Ill. 1986).) Once the trial court's order was entered requiring the disbursement of the funds to Bergson, Bergson had definite and clear property rights to the sums specified in the order.

Finally, plaintiff Gloria Talanda alleged that the CTA fraudulently entered into an agreement with her to pay her medical expenses incurred through September 1, 1996 when it had no intention to pay those expenses, let alone pay them in a timely manner. Here, the CTA induced Ms. Talanda to reduce and compromise her claims and give up her action before the Illinois Industrial Commission where she could seek an award in excess of the reduced and compromised amount and have her litigation costs taxed to the CTA in exchange for a reduced settlement sum and agreement to pay her medical bills. The CTA has not paid the outstanding medical bills incurred by Talanda as a result of her work-related accident, despite its clear and unequivocal agreement to do so as part of the settlement agreement reached with her.

It is the public policy of the State of Illinois as stated by the Illinois Supreme Court to encourage the settlement of claims. (See, *In re Guardianship of Ball*, 162 Ill.2d 153, 169, 205 Ill.Dec. 78, 612 N.E.2d 1195 (1994).) Likewise, the Illinois Supreme Court has recognized that governmental entities have no higher duty then to pay the judgments against them. (*People ex rel. Farwell v. Kelly*, 367 Ill. 616, 618-19, 12 N.E.2d 612 (1937).) The

Court of Appeals' decision in this matter is contrary to that public policy and will only serve to deter the settlement of actions by plaintiffs against local governmental units such as the CTA. Plaintiffs who would otherwise be willing to settle an action for less than the case may potentially be worth in exchange for the payment of an assured sum will be reluctant to do so when governmental entities such as the CTA are involved, as consideration will have to be given to whether the plaintiff will ever actually obtain the proceeds of the settlement agreement. The Court of Appeals' decision in this case serves as a sword to effectively grant local governmental units immunity from ever having to comply with the terms of their settlement agreements or to comply with the trial court's orders directing it to make payments.

This is not an instance in which the federal courts would be meddling in areas lying outside of their sphere of responsibility. Rather, in this case, plaintiffs' due process claims arise from defendant's fraudulent conduct in either entering into settlements with conditions and provisions it never intended to abide by or absconding with the funds of its employee. The focus of this case is not upon being promptly paid by the CTA. The focus of this case is upon the conduct and scheme of the CTA in fraudulently causing litigants to *compromise* and *reduce* their claims and give up their constitutionally protected and other rights in exchange for a settlement which the CTA *promised* to pay promptly but which it had *no intention* of paying, and failing to pay out on employee garnishments as ordered to do—knowing full well that it is immune from all garnishment or collection proceedings through the protection afforded it under state law. (See *Moore v. Town of Browning*, 373 Ill. 583, 588, 27 N.E.2d

533 (1940).) It is for these reasons that plaintiffs urge that this Court grant their Petition for Writ of Certiorari.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

DAVID A. NOVOSELSKY
Counsel of Record
LINDA A. BRYCELAND
DAVID A. NOVOSELSKY & ASSOCIATES
120 North LaSalle Street, Suite 1400
Chicago, Illinois 60602

DAVID S. PETRICH
SANDMAN, LEVY AND PETRICH
134 North LaSalle Street, Suite 1323
Chicago, Illinois 60602

Attorneys for Petitioners

APPENDIX

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 98-2245

SHAWNTAE WILLIAMSON, EARLIN WILLIAMSON, SHELDON J. SANDMAN, et al.,

Plaintiffs-Appellants,

v.

CHICAGO TRANSIT AUTHORITY, a municipal corporation,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.
No. 98 C 279—**George W. Lindberg**, *Judge*.

ARGUED FEBRUARY 22, 1999—DECIDED JULY 21, 1999

Before BAUER, RIPPLE and DIANE P. WOOD, *Circuit Judges*.

RIPPLE, *Circuit Judge*. Multiple plaintiffs brought claims against the Chicago Transit Authority ("CTA"), alleging violations of their due process rights. The district court granted the CTA's motion to dismiss for failure to state a claim. For the reasons set forth in the following opinion, we affirm the judgment of the district court.

I

BACKGROUND

The plaintiffs allege that the CTA, which is a municipal corporation, defrauded them by entering into various settlement agreements while intending not to pay amounts due under those agreements. They also allege that the CTA has refused to pay state court judgments. Count I is brought by Shawntae Williamson. After initiating a personal injury claim against the CTA in state court, Ms. Williamson settled the claim for $12,000 on July 28, 1997. When the CTA did not pay her within the agreed upon time, she brought a motion in state court to enforce the settlement order. The court entered judgment against the CTA on November 20, 1997. The CTA continued in its failure to make payment; consequently, on January 16, 1998, Ms. Williamson and the firm representing her in the state proceedings filed this action in the district court. Two weeks later, on January 30, 1998, the CTA tendered a check in the amount of $12,871.13 to cover the settlement amount plus accrued interest, costs and attorneys' fees. After a complaint by Ms. Williamson, the CTA made corrections to the spelling of Ms. Williamson's name as it appeared on the check. Ms. Williamson deposited the corrected check in March 1998.[1]

Count III of the complaint is brought by the law firm Berkson, Gorov & Levin, Ltd., as well as by the three name partners of that firm. This count alleges that the firm represented a client, Sandra Edwards, in divorce proceedings in Illinois state court against William Artis. A judgment in the amount of $2,370.25 for attorneys' fees was entered in favor of Edwards against Artis. A wage deduction summons and affidavit was served on the CTA, Artis' employer. A judgment in the amount of $1,317.58

---

[1] Count II alleges essentially the same facts as Count I, but is based on common law fraud rather than a federal due process violation. After dismissing the federal claims, the district court declined to exercise supplemental jurisdiction over Count II.

was entered against the CTA and in favor of Berkson, Gorov & Levin on December 19, 1997. The CTA delivered a check to the plaintiffs approximately 2 months later. On February 23, 1998, the plaintiffs executed a release and satisfaction of judgment in state court, stating that they had "received full satisfaction and payment" from the CTA. The plaintiffs complain in this lawsuit that the CTA designated the wrong payee when it paid the wage deduction judgment. The CTA's check was made payable to "Sondra [sic] Edwards and Berkson, Gorov & Levin, Ltd.," even though judgment in the state court was entered only in favor of Berkson, Gorov & Levin, and not Edwards. Upon reviewing the complaint in this case, the CTA issued a replacement check.

Count IV of the complaint was brought by Gloria Talanda, a former CTA employee. Ms. Talanda filed two worker's compensation claims with the Illinois Industrial Commission. Ms. Talanda and the CTA settled the claims for $50,697. She alleges in Count IV that the terms of the settlement agreement require the CTA to pay her medical and hospital expenses accrued through September 1, 1996. Collection agencies have been attempting unsuccessfully to obtain payment from the CTA for over a year.

II

DISCUSSION

The plaintiffs are seeking, in each claim, to enforce a state court judgment or settlement agreement. They claim that the CTA's fraudulent scheme of refusing to pay violates the Due Process Clause of the Fourteenth Amendment. The district court held that this court's decision in *Evans v. City of Chicago*, 10 F.3d 474 (7th Cir. 1993) (en banc), requires that the plaintiffs' claims be dismissed for failure to state a claim. We agree with the district court's assessment.

In *Evans*, this court confronted a situation in which the City of Chicago waited an average of 47 months to pay its

judgment creditors. *See id.* at 475. Chicago chose to do this because market interest rates were much higher than the interest it paid to judgment creditors; borrowing from market creditors rather than from judgment creditors would have been expensive. The judgment creditors sued the city, arguing, in part, that the slow payment violated their due process rights. The parties entered into a consent agreement requiring all judgments to be paid in the order of their entry.

This court[2] held that the parties failed to state a claim under the Due Process Clause. A plurality of the court stated that "entry and continued enforcement of a consent decree regulating the operation of a governmental body depend on the existence of a substantial claim under federal law." *Id.* at 480. The plaintiffs' theory in that case was that they were deprived of their due process rights in property interests because the city violated state law by failing to make prompt payment. This court rejected the argument that such a claim presented a substantial federal claim. The judges joining the principal opinion concluded that, based on "principles of respect for a coordinate sovereign," complaints about the timely payment of judgments should not be addressed under the Due Process Clause. *Id.*

The plaintiffs suggest that the *Evans* holding is limited to situations in which the lack of payment stems from a legislative enactment or budgetary considerations. Our decision in *Chaney v. Suburban Bus Division of the Regional Transportation Authority*, 52 F.3d 623 (7th Cir. 1995), indicates that *Evans* is not so limited. In that case, we confronted a situation in which a municipal unit refused to obey an arbitrator's decision requiring that the municipal unit award an employee back-pay. Relying on *Evans*, we held that "[a] refusal to pay an arbitration award doe

---

[2] The principal opinion in *Evans* was a plurality opinion. A majority of the court agreed, however, with the principles relevant to this case.

not in and of itself establish a due process violation." *Id.* at 631. The court noted that, whatever objections the plaintiffs had to the defendant's refusal-to-pay tactics, "Illinois law can address them." *Id.*

Evans and *Chaney* establish that the failure of a unit of state or local government to make payment on either a judgment award or settlement agreement does not give rise to a due process claim. Federal courts should not, under the guise of the Due Process Clause, become embroiled in a party's attempt to enforce such state court judgments and settlement agreements against states and municipalities. *See Mid-American Waste Sys., Inc. v. City of Gary*, 49 F.3d 286, 290 (7th Cir. 1995) ("[T]he due process clause does not require, or even permit, federal courts to enforce the substantive promises in state laws and regulations." (citing *Evans*)). The plaintiffs should enforce their claims under state law.

The plaintiffs make several other arguments against the application of *Evans*. First, they argue that we should not apply *Evans* to this case because they have no remedy under state law. They note that Illinois law does not allow holders of judgments against a municipality to collect by execution against the property of the municipality. *See Moore v. Town of Browning*, 27 N.E.2d 533, 536 (Ill. 1940). However, acceptance of the plaintiffs' argument would require that we overturn both *Evans* and *Chaney*, because in each of those cases the municipal unit would have received the same immunity from enforcement of judgment that the CTA has in this case. Moreover, the plaintiffs do have possible recourse in state court. Sanctions, contempt proceedings and writs of mandamus could be used in state court to force the CTA to pay. *See, e.g., May v. Central Illinois Pub. Serv. Co.*, 633 N.E.2d 97, 102 (Ill. App. Ct. 1994); *Kubiak v. City of Kewanee*, 592 N.E.2d 1200, 1201-02 (Ill. App. Ct. 1992); *Estate of DeBow v. City of East St. Louis*, 592 N.E.2d 1137, 1140 (Ill. App. Ct. 1992). The plaintiffs' suggestion during oral argument that state courts are unlikely to grant such relief is not a

sufficient ground upon which to transform this matter into a federal lawsuit.

The plaintiffs also claim that *Evans* does not control because the claims in this case are different from the claims in *Evans*. In *Evans*, the claimed right to timely payment was based on the Illinois statute requiring that a local public entity make, at a minimum, installment payments to tort judgment creditors if it decides to postpone full payment to those creditors. *See* 745 ILCS 10/9-104. Here, in contrast, the claims are based on an alleged fraudulent scheme to refuse payment under settlement agreements and court judgments.[3] We do not believe that this distinction alters the fundamental analysis. The claim is still a state law claim. The point remains that a state or municipality's failure to make payments on state court judgments or settlement agreements does not give rise to a federal due process violation.

Conclusion

For the foregoing reasons, the judgment of the district court is affirmed.

AFFIRMED

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

---

[3] Berkson, Gorov & Levin, Ltd. argues that it is not a judgment creditor at all because it is seeking funds to which the government never had a right in the first place. However, the above reasoning still applies because the legal basis for the firm's claim, as stated in the complaint, is a judgment entered by the state court.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Case Number: 98 C 279 Date: May 5, 1998

Name of Assigned Judge: George W. Lindberg

Case Title: Williamson *et al.* v. CTA

* * * * *

DOCKET ENTRY:

* * * * *

(10) ☒ [Other docket entry]
Defendant CTA's motion to dismiss the Third Amended Complaint is granted. The Third Amended Complaint is dismissed for failure to state a viable federal cause of action. FRCP 12(b)(6). All pending motions are denied as moot. Terminating case.

(11) ☒ [For further detail see ☒ order on the reverse of * * * the original minute order form.]

* * * * *

[Reverse Side]

ORDER

In Count I of the Third Amended Complaint, plaintiffs Shawntae and Earlin Williamson allege that they agreed to settle their personal injury claims against defendant CTA on the condition that the settlement award would be paid within forty-five days. Plaintiffs allege that the CTA

delayed payment of the award and thereby deprived them of their liberty and property interests in having a trial and recovering full compensation for their injuries without due process of law. Plaintiffs Sandman, Levy, and Petrich, individually and as partners in an eponymously named law firm, allege that the CTA also delayed payment of a fee award arising from this litigation. These section 1983 claims are directly foreclosed by *Evans v. City of Chicago*, 10 F.3d 474, 480-482 (7th Cir. 1993), where the Seventh Circuit explained that the failure of a unit of local or state government to make timely payment of a settlement award does not give rise to a due process claim. Although the Williamsons insist that their claim is distinguishable from *Evans* because it includes an allegation of fraudulent inducement, the holding in *Evans* was not confined to the particular mechanism by which the alleged constitutional deprivation occurred. Instead, it was based on the broader notion that "litigants aggrieved by [a defendant agency's] failure to adhere to state law must take their claims to state court." *Id.* at 481. Defendant CTA's motion to dismiss Count I for failure to state a claim must therefore be granted. Fed.R.Civ.P. 12(b)(6).

In Count III, plaintiffs Berkson, Gorov and Levin, individually and as partners in an eponymously named law firm, allege that the CTA delayed payment of a judgment in favor of a client and thereby caused a deprivation of the firm's liberty and property interest in its portion of the judgment. Assuming that the firm has standing to sue, which is not clear from the face of the complaint, it has presented a straightforward delay-in-payment claim which, for the reasons described above, is barred under

Evans, 10 F.3d 474. Defendant CTA's motion to dismiss Count III for failure to state a claim must therefore be granted. Fed.R.Civ.P. 12(b)(6).

In Count IV, plaintiff Gloria Talanda alleges that she agreed to settle her worker's compensation claims against the CTA on the condition that it would pay her reasonable medical expenses. Talanda alleges that the CTA delayed payment of those expenses and that this caused a deprivation of her liberty and property interest in a favorable credit rating. Assuming Talanda suffered this injury, her claim is essentially one for damages resulting from the CTA's failure to comply with the terms of its settlement agreement. This claim, like those in Counts I and III, is barred in this forum under *Evans*, 10 F.3d 474. Accordingly, defendant CTA's motion to dismiss Count IV for failure to state a claim must be granted.

Count II of the Third Amended Complaint is a state claim based on common law fraud. Having dismissed all the federal claims in this action, the court declines to exercise supplemental jurisdiction over Count II.

/s/ George W. Lindberg

App. 10

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JUDGMENT IN A CIVIL CASE

Williamson, et al.

v. Case Number: 98 C 279

CTA

☐ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury rendered its verdict.

☐ Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED defendant, CTA's motion to dismiss the third amended complaint is granted. The third amended complaint is dismissed for failure to state a viable federal cause of action.

Date: 5/6/98

Michael W. Dobbins,
Clerk of Court

/s/ Sandra L. Brooks
Sandra L. Brooks,
Deputy Clerk